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15 John Marinovich and Gayle Sibley

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

19 JOHN MARINOVICH, on behalf of himself) Case No.
and all others similarly situated, and GAYLE)
20 SIBLEY, on behalf of herself and all others) CLASS ACTION COMPLAINT FOR
similarly situated,) VIOLATION OF THE CALIFORNIA
21 Plaintiffs,) FALSE ADVERTISING ACT;
22 vs.) VIOLATION OF THE CALIFORNIA
23 GOJO INDUSTRIES, INC.; and DOES 1) UNFAIR COMPETITION LAW; AND
through 100, inclusive,) VIOLATION OF THE CALIFORNIA
24) CONSUMER LEGAL REMEDIES ACT
25) AND RELATED CONSUMER
Defendant.) PROTECTION STATUTES

27 Plaintiffs John Marinovich and Gayle Sibley (“Plaintiffs”), on behalf of themselves and
28 those similarly situated, based on information, belief and investigation of their counsel, except for

1 information based on their personal knowledge, complain and allege as follows against Defendant
 2 GOJO Industries, Inc. (“Defendant”):

3 **INTRODUCTION**

4 1. This case addresses Defendant’s unlawful, unfair and deceptive business practices
 5 connected with the advertising, marketing, and sales of Purell.¹ Purell is advertised, marketed, and
 6 sold as a product that will prevent or reduce the flu and other viruses. However, Defendant has no
 7 reliable studies to make such a representation.

8 2. On January 17, 2020, the United States Food & Drug Administration (“FDA”) issued
 9 a warning letter to Defendant, pointing to advertising on Defendant’s websites and social media
 10 suggesting that Purell produces a clinical reduction in infection or disease of the flu or other viruses.
 11 The FDA states that it is not aware of “any adequate and well-controlled studies” supporting that
 12 representation.

13 3. The representations referred to by the FDA are just the tip of the iceberg of
 14 Defendant’s flu and virus advertising campaign. For years, Defendant has been building its brand
 15 as a product that kills and prevents the flu and other viruses. Its posts on social media show pictures
 16 of sneezing children and include captions and links to suggestions that Purell will produce a clinical
 17 reduction in infection or disease of the flu or other viruses.

18 4. Indeed, Plaintiffs purchased Purell because of Defendant’s advertising and branding,
 19 which suggest that Purell will reduce infection and the disease of the flu and other viruses.

20 5. However, like hundreds of thousands, if not millions, of other consumers who
 21 purchased Purell, Plaintiffs did not receive a product that reduced their or anyone else’s chance of
 22 catching the flu or other viruses or reducing the impact of those illnesses. Instead, they received
 23 only the dangerous, false confidence that comes in Purell’s packaging.

24 **PARTIES**

25
 26 _____
 27 1 “Purell” is defined herein as including PURELL® Healthcare Advanced Hand Sanitizer product line that
 28 includes the over-the-counter (OTC) drug products “PURELL® Healthcare Advanced Hand Sanitizer Gentle & Free Foam,” “PURELL® Healthcare Advanced Hand Sanitizer Gel,” “PURELL® Healthcare Advanced Hand Sanitizer Foam,” “PURELL® Healthcare Advanced Hand Sanitizer Gentle & Free Foam ES6 Starter Kit,” and “PURELL® Healthcare Advanced Hand Sanitizer ULTRA NOURISHING™ Foam.”

6. Plaintiff Gayle Sibley is resident of San Francisco, California. She purchased and used Purell in San Francisco, California.

7. Plaintiff John Marinovich is a resident of San Diego, California. He purchased and used Purell in San Diego, California.

8. GOJO Industries, Inc. is an Ohio corporation with its principal place of business in Akron, Ohio. It manufactures, distributes, and sells Purell in California through retailers, including retailers that it directs purchasers to from its own website.

8 9. The true names and capacities, whether individual, corporate, associate, or otherwise,
9 of defendants DOES 1 through 100, inclusive, are unknown to Plaintiffs, who therefore sue said
10 defendants by such fictitious names. Plaintiffs are informed and believe and thereon allege that each
11 of the defendants designated as a DOE is legally responsible in some manner for the events and
12 happenings herein referred to, and legally caused the injury and damages as herein alleged. At such
13 time that said defendants' true names become known to Plaintiffs, they will ask leave of this Court
14 to amend this Complaint to insert said true names and capacities.

15 10. GOJO Industries, Inc. and DOES 1 through 100 are collectively referred to herein as
16 "Defendant."

JURISDICTION AND VENUE

18 11. This Court has jurisdiction over the claims asserted herein individually and on behalf
19 of the Classes pursuant to 28 U.S.C. § 1332(d)(2). Subject matter jurisdiction is proper because: (1)
20 the amount in controversy in this class action exceeds five million dollars, exclusive of interest and
21 costs; and (2) a substantial number of the Class Members are citizens of a state different from that
22 of Defendant GOJO. The amount in controversy exceeds \$5,000,000 for Plaintiffs and Class
23 Members collectively, exclusive of interest and costs, because of the combined purchase price or
24 premium paid by Plaintiffs and the Class Members for Purell, and the profits kept by Defendant
25 from such transactions due to the conduct alleged herein.

26 12. This Court has jurisdiction over Defendant because it is a corporation or other entity
27 that has sufficient minimum contacts in California or otherwise intentionally avails itself of the
28 California market either through the distribution, sale or marketing of Purell in the State of

1 California, or through its retailers which sold Purell to Plaintiffs in California, so as to render the
2 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play
3 and substantial justice.

4 13. Venue is proper pursuant to 28 U.S.C. § 1391(a) because a substantial part of the
5 events or omissions giving rise to the claim occurred in this District.

6 14. **Intradistrict Assignment** (L.R. 3-2(c) and (d) and 3.5(b)): This action arises in San
7 Francisco County, in that a substantial part of the events which give rise to the claims asserted herein
8 occurred in San Francisco County.

FACTS

10 15. Defendant manufactures, markets, advertises, and sells Purell, which is a product line
11 of alcohol-based hand sanitizers. Defendant sells Purell across the country through online retailers
12 and brick and mortar stores that it directs consumers to through its own website's "Where to Buy"
13 feature.

14 16. Defendant dominates the hand sanitizer market. According to Purell's website, "[i]n
15 1997, PURELL® Hand Sanitizer was made available to consumers. It soon became America's #1
16 hand sanitizer and a significant part of popular culture."

17 17. Purell is everywhere. It is used in people's homes, shopping areas, airports, schools,
18 and carried around by Class Members in school backpacks, purses, and briefcases.

18. As Defendant says on the Purell website, “[t]oday, PURELL® Hand Sanitizer
19 remains one of the most recognized brands in the world. It defines the hand sanitizer category and
20 is the brand most preferred by doctors, professionals and consumers everywhere.”
21

22 19. For years, Defendant has patterned its advertising using a consistent playbook. First,
23 scare people about the flu. Second, given them some tips on reducing the chances of infection.
24 Third, slip in a recommendation to use a hand sanitizer either in addition to washing hands with
25 soap and water or in place of soap and water if they are not available. Fourth, let consumers see the
26 words “flu” and “Purell” in the same space. Fifth, let consumers reach the inference that Purell must
27 prevent and reduce the flu and other viruses based on the wording and images used.

1 20. Indeed, flu season is Defendant's time to make money, as the Vice President of
 2 Marketing for GOJO said in a 2004 article in AdAge.com: "We have been seeing an impact on our
 3 Purell sales [due to the vaccine shortage] and we expect that to continue," said Sandy Katz, VP-
 4 marketing of GoJo. 'It's similar to what we saw during the SARS outbreak last year.'"²

5 21. In a press release issued by Defendant, dated December 12, 2019, Defendant notes
 6 that it's not just holiday party season, "it's also flu season." Then, it offers some tips for consumers
 7 to prepare their homes for the holiday season, including: "4. Strategically place hand sanitizer at
 8 key locations. As more than 80 percent of illnesses are transmitted by the hands, 3. having hand
 9 sanitizer easily accessible is a great way to stop the spread of germs amongst your guests. Use hand
 10 sanitizer that contains at least 60 percent alcohol and place bottles near where your food is being
 11 served and eaten."³

12 22. An inexhaustive search of Defendant's Twitter posts from the account @PURELL
 13 shows that Defendant has been suggesting that Purell prevents or reduces flu and other virus
 14 infections for years. (See Twitter Screenshots attached as Exhibit A.) One such example is the
 15 following:



² <https://adage.com/article/news/purell-clorox-kleenex-benefit-flu-fear-equals-marketer-bonanza/100912>

³ <https://www.prnewswire.com/news-releases/5-tips-to-host-a-healthier-holiday-party-300974022.html>

1 23. Additionally, Defendant's websites www.gojo.com and www.purell.com both
 2 contain multiple statements suggesting that Purell prevents or reduces flu infections.

3 24. On www.purell.com/cold-flu-season, Defendant states: "Everyday hand hygiene,
 4 both handwashing and hand sanitizing with an alcohol-based hand sanitizer is the single most
 5 important way to reduce the spread of germs." (See Defendant's Website Screenshots attached as
 6 Exhibit B.)

7 25. One of the GOJO Blog pages, titled "Don't Let the Flu Slow Down Your Office,"
 8 starts by warning of the dangers of the flu. Then, it states: "The impact the flu has on both employee
 9 and employer health is significant, yet there are actions employers can take to help in keeping
 10 employees, and even their bottom line, healthy." Then, it states: "Hand hygiene – handwashing
 11 with soap and water or using an alcohol-based hand sanitizer with at least 60% alcohol when soap
 12 and water are not available – is one of the most important measures we can all take to reduce the
 13 spread of illness-causing germs. Making hand hygiene products, such as hand sanitizing wipes and
 14 alcohol-based hand sanitizer, available is a great way to promote hand hygiene practices throughout
 15 the office." (See *id.*)

16 26. Another GOJO Blog page, titled "Is it a Cold or the Flu?" again starts with a
 17 description of the dangers of the flu. Then, it instructs people to "Practice good hand hygiene. Wash
 18 your hands with soap and water or use an alcohol-based hand sanitizer with at least 60% alcohol
 19 when soap and water are not available." (See *id.*)

20 27. Another GOJO Blog page, titled "Why Do Flu Outbreaks Happen in the Winter?"
 21 states: "While we may not be able to rush to or live in climates with high humidity during the winter
 22 months, there are measures we can all take to reduce our risk of becoming ill; these include the
 23 practice of good hand hygiene (handwashing or hand sanitizing with an alcohol-based hand sanitizer
 24 when soap and water are not available) at key moments and surface disinfection." (See *id.*)

25 28. Another GOJO Blog page, titled "It's Not Just Cold and Flu Season!", starts by
 26 warning of the dangers of the flu and then discusses the dangers of norovirus. Then it states,
 27 "[p]ractice good hand hygiene. Make sure to wash your hands with soap and water at key moments,
 28 especially after using the restroom since the virus can spread through stool. Alcohol-based hand

1 sanitizers with at least 60% alcohol can be used in addition to handwashing. ... Disinfect frequently
 2 touched surface. Immediately disinfect and clean contaminated surfaces with a disinfectant and
 3 cleaner formulated to kill norovirus. For example, PURELL® Surface Sprays kill norovirus in 30
 4 seconds.” (See *id.*)

5 29. The representations described in Paragraphs 22 through 28 of this Complaint were all
 6 still available online as of January 29, 2020.

7 30. On January 17, 2020, the FDA issued a warning letter to Defendant, pointing to
 8 similar advertising on Defendant’s websites and social media, which the FDA said suggested that
 9 Purell produces a clinical reduction in infection or disease of the flu or other viruses. The FDA
 10 states that it is not aware of “any adequate and well-controlled studies” supporting that claim. (See
 11 FDA Letter, attached as Exhibit C.)

12 31. The FDA pointed out some specific statements made by Defendant:

13 What Steps Can I Take to Prevent the Spread of Norovirus? Even though
 14 norovirus is highly contagious, there are ways you can reduce the risk of its
 15 spread. According to the Centers for Disease Control and Prevention, follow
 16 these steps to reduce the spread of the virus. 1. Practice good hand hygiene.
 17 Make sure to wash your hands with soap and water at key moments,
 especially after using the restroom since the virus can spread through stool.
 Alcohol-based hand sanitizers with at least 60% alcohol can be used in
 addition to handwashing . . .

18 Are PURELL® Hand Sanitizer products effective against the flu? The FDA
 19 does not allow hand sanitizer brands to make viral claims, but from a
 20 scientific perspective, influenza is an enveloped virus. Enveloped viruses in
 21 general are easily killed or inactivated by alcohol. The World Health
 22 Organization (WHO) and the Center for Disease Control and Prevention
 23 (CDC) are recommending the use of alcohol-based hand sanitizer as a
 24 preventive measure for flu prevention”

25 Is PURELL® Advanced Hand Sanitizer Effective Against Ebola? . . . As of
 26 today, we are not aware of any hand sanitizers that have been tested against
 27 Ebola viruses, including PURELL® Advanced Hand Sanitizer. However, it
 28 is important to note that the Ebola virus is an enveloped virus. Enveloped
 viruses in general are easily killed or inactivated by alcohol. World Health
 Organization (WHO) and the Center for Disease Control and Prevention
 (CDC) are recommending the use of alcohol-based hand sanitizer as a
 preventive measure during this outbreak . . .⁴

⁴ (Id.)

1 32. The FDA observed these statements and stated that “we are not aware of evidence
2 demonstrating that the PURELL® Healthcare Advanced Hand Sanitizer products as formulated and
3 labeled are generally recognized by qualified experts as safe and effective for use under the
4 conditions suggested, recommended, or prescribed in their labeling.” (*Id.*)

5 33. Consistent with the concerns raised by the FDA, Plaintiff Sibley purchased Purell
6 because she thought it would prevent or reduce the flu and other viruses. She purchased Purell on
7 at least 5 separate occasions over the last 4 years at many retailers, including but not limited to
8 Target and CVS. Based on the Purell advertising campaign and branding, she believed that Purell
9 would prevent or reduce the flu and other viruses. She would not have purchased Purell or paid as
10 much for it as she paid, if she knew there was no reliable evidence to support Defendant's deceptive
11 advertising.

12 34. Similarly, Plaintiff Marinovich purchased Purell because he thought it would prevent
13 or reduce the flu and other viruses. He purchased Purell on at least 8 separate occasions over the
14 last 4 years at many retailers, including but not limited to CVS pharmacy, Rite Aid, and Navy
15 Exchange. Based on the Purell advertising campaign and brand management, he believed that Purell
16 would prevent or reduce the flu and other viruses. He would not have purchased Purell or paid as
17 much for it as he paid, if he knew there was no reliable evidence to support Defendant's deceptive
18 advertising.

19 35. Plaintiffs bring this action to stop Defendant's deceptive practices and undo the harm
20 that it has caused to consumers in California and across the country.

CLASS ALLEGATIONS

22 36. Plaintiffs bring this action on behalf of themselves and the Classes defined as follows:
23
24 Multi-State Class Based on Violation of State Consumer Protection Statutes: All
25 individuals and entities in the states of California, Florida, Illinois, Massachusetts,
26 Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Rhode
Island, Washington and Wisconsin who purchased Purell in California during the
applicable statute of limitations period from the beginning of any applicable
limitations period through the date of class certification (the "Consumer
Protection Multi-State Class").⁵

²⁸ ⁵ California Business & Professions Code section 17200, *et seq.*, prohibits any “unlawful, unfair or fraudulent business act or practice” and California’s Consumer Legal Remedies Act, California Civil Code section 1770

California Sub-Class: All persons who purchased Purell in California during the applicable statute of limitations period (“the California Class”).

37. Plaintiffs are unable to state the precise number of potential Class Members because that information is in the possession of Defendant. However, the number of putative Class Members is so numerous that joinder would be impracticable. The Classes and the identity of the Class Members will be readily ascertainable based on objective criteria. The Classes are determinable and manageable in size and can be notified through reasonable expenditure of time and money. Furthermore, the California Class consists largely of persons residing in California.

38. The Class definitions are reasonably limited in time. The definition's time period is limited to purchases made during the applicable statute of limitations.

39. Common questions of law and fact predominate over questions affecting only individual Class Members. Individual questions are limited to the easily determined and provable issue of how much was paid by the individual Class Members for Purell. Common questions of law and fact predominate, including:

- a. Whether Defendant advertises, markets, and sells Purell by representing or implying that Purell will produce a clinical reduction in infection or disease of the flu or other viruses;
- b. Whether Defendant's advertising, marketing, and selling of Purell by representing or implying that Purell will produce a clinical reduction in infection or disease of the flu or other viruses are likely to deceive a reasonable consumer;
- c. Whether a reliable study or evidence that Purell will produce a clinical reduction in infection or disease of the flu or other viruses existed prior to the filing of this Complaint;

et seq. similarly protects consumers from unfair business practices. The states in the Consumer Protection Multi-State Class are limited to states with similar consumer protection laws namely: Florida (Fla. Stat. § 501.201 *et seq.*); Illinois (815 ILCS 505/1, *et seq.*); Massachusetts (Mass. Gen. Laws Ch. 93A *et seq.*); Michigan (Mich. Comp. Laws § 445.901, *et seq.*); Minnesota (Minn. Stat. § 325F.67, *et seq.*); Missouri (Mo. Rev. Stat. § 407.010, *et seq.*); New Hampshire (N.H. Rev. Stat. § 358-A:1); New Jersey (N.J. Stat. § 56:8-1, *et seq.*); New York (N.Y. Gen. Bus. Law § 349, *et seq.*); Rhode Island (R.I. Gen. L. § 6-13.1, *et seq.*); Washington (RCW 19.86.010, *et seq.*); and Wisconsin (WIS. STAT. § 100.18, *et seq.*).

- 1 d. Whether any fine print statements in Purell advertising materials is likely to be read
- 2 and understood by a reasonable consumer;
- 3 e. Whether Defendant's advertising, marketing, and selling of Purell violates California
- 4 consumer protection laws;
- 5 f. Whether Defendant engaged in unfair competition;
- 6 g. Whether Defendant has been unjustly enriched by its collection and retention of
- 7 payments for Purell when it represented, inaccurately, that Purell prevented or
- 8 reduced viruses, including but not limited to the flu and norovirus; and
- 9 h. Whether Defendant should be enjoined from further false, misleading or deceptive
- 10 advertisements and/or unfair competition and be forced to pay restitution to Class
- 11 Members for the amounts paid for Purell.

12 40. Plaintiffs are members of the Classes they seek to represent, and Plaintiffs' claims are
13 typical of the claims of other Class Members. The misleading and deceptive advertising campaign
14 stating and implying that Purell prevents and reduces the flu and other viruses was made to the
15 general public. Defendant has the same obligations to Plaintiffs and to all Class Members with
16 respect to the advertising and sales of Purell. Furthermore, the nature of the damages and their
17 causation will be the same for Plaintiffs as for other Class Members.

18 41. Plaintiffs' claims against Defendant for false, misleading or deceptive advertising and
19 for unfair competition are also typical of Class Members. Plaintiffs have suffered actual injury in
20 fact by purchasing Purell because they thought it would prevent or reduce flu and other viruses as a
21 result of Defendant's deceptive advertising and sales materials.

22 42. The Classes are so numerous that joinder of all Class Members is impractical.
23 Plaintiffs are unable to state the exact number of Class Members without discovery of the
24 Defendant's records. However, as alleged above, Plaintiffs believe that based on the number of
25 retail establishments selling Purell in California and across the country there are hundreds of
26 thousands of Class Members if not more. This estimate is based in part on statements made on
27 Purell's own website about "Where to Buy" Purell.

1 43. Plaintiffs will fairly and adequately represent and protect the interests of the Classes
 2 because (i) Plaintiffs have retained experienced litigation counsel and counsel will adequately
 3 represent the interests of the Classes; (ii) Plaintiffs and their counsel are aware of no conflicts of
 4 interest between Plaintiffs and absent Class Members; and (iii) Plaintiffs will assist counsel in the
 5 prosecution of this action.

6 44. A class action provides a fair and efficient method of adjudicating this controversy,
 7 and is superior to other available methods of adjudication in that (i) neither the size of the Classes,
 8 nor any other factor, make it likely that difficulties will be encountered in the management of this
 9 action as a class action; (ii) the prosecution of separate actions by individual Class Members or the
 10 individual joinders of all Class Members in this action is impracticable, and would create a massive
 11 and unnecessary burden on the resources of California Courts, and could result in inconsistent
 12 adjudications, while a single class action can determine, with judicial economy, the rights of each
 13 member of the Classes; (iii) because of the disparity of resources available to Defendant versus those
 14 available to individual Class Members, prosecution of separate actions would work a financial
 15 hardship on many Class Members; (iv) there is no plain, speedy, or adequate remedy available to
 16 Class Members other than by maintenance of this class action because Plaintiffs are informed and
 17 believe, and based thereon allege, that the damage to each Class Member is relatively modest
 18 compared to the costs of litigating the issues in this action, making it economically unfeasible to
 19 pursue remedies other than in a class action; and (v) the conduct of this action as a class action
 20 conserves the resources of the parties and the Court system and protects the rights of each Class
 21 Member and meets all due process requirements as to fairness to all parties. A class action is also
 22 superior to the maintenance of these claims on a claim by claim basis because all of the claims arise
 23 out the same circumstances and course of conduct.

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FIRST CLAIM

Violation of the California False Advertising Act –

Business & Professions Code §§ 17500, et seq.)

(On Behalf of the California Class and Against Defendant and Does 1 through 100)

5 45. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through
6 44, and each and every part thereof with the same force and effect as though fully set forth herein.

7 46. Defendant engaged in unfair and deceptive advertising, in violation of California
8 Business and Professions Code § 17500, et seq., by misrepresenting to Plaintiffs and Class Members
9 in advertisements Purell prevented or reduced the flu and other viruses, when, in fact, there was no
10 reliable evidence supporting such advertising.

11 47. These acts and practices, as described above, have deceived Plaintiffs and Class
12 Members, causing them to lose money by purchasing Purell or paying more for it than they
13 otherwise would, as herein alleged, and have deceived and are likely to deceive the consuming
14 public. Accordingly, Defendant's business acts and practices, as alleged herein, have caused injury
15 to Plaintiffs and Class Members.

16 48. In the absence of Defendant's misrepresentations, Plaintiffs and Class Members
17 would not have purchased Purell or would not have paid a price premium for it.

18 49. Plaintiffs and Class Members are entitled to relief, including full restitution and/or
19 disgorgement of all revenues, earnings, profits, compensation, and benefits which may have been
20 obtained by Defendant as a result of such business acts or practices, and enjoining Defendant from
21 engaging in the practices described herein.

SECOND CLAIM

Violation of the California Unfair Competition Law –

Business & Professions Code §§ 17200, *et seq.*)

(On Behalf of Both Classes and Against Defendant and Does 1 through 100)

26 50. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through
27 44, and each and every part thereof with the same force and effect as though fully set forth herein.

1 51. California Business and Professions Code section 17200 prohibits any “unfair
 2 deceptive, untrue or misleading advertising.” For the reasons discussed above, Defendant has
 3 engaged in unfair, deceptive, untrue and misleading advertising in violation of California Business
 4 & Professions Code sections 17200, *et seq.* by advertising that Purell reduces or prevents the flu or
 5 other viruses in the absence of reliable studies.

6 52. California Business & Professions Code section 17200 also prohibits any “unlawful,
 7 unfair or fraudulent business act or practice.”

8 53. Defendant has violated Sections 17200, *et seq.*’s prohibition against engaging in
 9 unlawful, unfair or fraudulent acts and practices by, among other things: making the
 10 misrepresentations and omissions of material fact about Purell alleged herein; violating California
 11 False Advertising Act – Business & Professions Code §§ 17500, *et seq.*, by making the
 12 misrepresentations about Purell; and violating section 1770 of the Consumers Legal Remedies Act.
 13 Defendant violated Section 1770 by at least the following:

- 14 a. Making false representations that Purell has characteristics, uses or benefits which
 15 it does not, in violation of California Civil Code § 1770(a)(5)
- 16 b. Making false representations that Purell is of a particular quality, which it is not, in
 17 violation of California Civil Code § 1770(a)(7);
- 18 c. Advertising Purell without the intent to sell it as advertised, in violation of California
 19 Civil Code § 1770(a)(9); and
- 20 d. Representing that the subject of a transaction has been supplied in accordance with
 21 a previous representation when it has not, in violation of California Civil Code §
 22 1770(a)(16).

23 54. Plaintiffs and Class Members reserve the right to allege other violations of law that
 24 constitute other unlawful business acts or practices. Such conduct is ongoing and continues to this
 25 date.

26 55. Defendant’s acts, omissions, misrepresentations, practices and non-disclosures as
 27 alleged herein also constitute deceit under Cal. Civ. Code § 1710: “[t]he suppression of a fact, by

1 one who is bound to disclose it, or who gives information of other facts which are likely to mislead
 2 for want of communication of that fact.”

3 56. Defendant’s acts, omissions, misrepresentations, practices and non-disclosures as
 4 alleged herein also constitute violations of Sections 17200, *et seq.*’s prohibition against fraudulent
 5 acts and practices.

6 57. Defendant’s acts, omissions, misrepresentations, practices and non-disclosures as
 7 alleged herein also constitute “unfair” business acts and practices within the meaning of Business
 8 & Professions Code sections 17200, *et seq.* in that Defendant’s conduct is substantially injurious to
 9 consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous as the
 10 gravity of the conduct outweighs any alleged benefits attributable to such conduct. Plaintiffs assert
 11 violations of the public policy of engaging in false and misleading advertising, unfair competition,
 12 and deceptive conduct towards consumers. There were reasonable alternatives available to further
 13 Defendant’s legitimate business interests, other than the conduct described herein. This conduct
 14 constitutes violations of the unfair prong of California Business & Professions Code sections 17200,
 15 *et seq.*

16 58. Defendant’s conduct is also a breach of warranty. Defendant’s representations that
 17 Purell prevents or reduces the flu and other viruses constitute affirmations of fact made with regard
 18 to Purell, as well as descriptions of Purell, that are part of the basis of the bargain between Defendant
 19 and purchasers of Purell. Because those representations are material and false, Defendant has
 20 breached their express warranty as to Purell and have violated California Commercial Code §2313.

21 59. Defendant’s unfair business practices and conduct described herein were the
 22 immediate cause of damages suffered by Plaintiffs and Class Members.

23 60. Defendant’s unfair business practices and conduct described herein caused Plaintiffs
 24 and Class Members to buy or pay more for Purell.

25 61. Furthermore, Defendant’s misrepresentations and omissions caused Plaintiffs and
 26 Class Members actual damages because had they known the truth about Purell, they would not have
 27 purchased it or paid so much for it.

28

1 62. Defendant's conduct caused and continues to cause substantial injury to Plaintiffs.
2 Plaintiffs and the other Class Members have suffered injury in fact and have lost money as a result
3 of Defendant's wrongful conduct.

4 63. Pursuant to Business & Professions Code section 17203, Plaintiffs and the other Class
5 Members seek an order requiring Defendant to immediately cease such acts of unlawful, unfair, and
6 fraudulent business practices and requiring Defendant to engage in a corrective advertising
7 campaign.

8 64. Unless Defendant is enjoined from continuing to engage in these unfair, unlawful and
9 fraudulent business practices, Plaintiffs, and the public, will continue to be injured by Defendant's
10 actions and conduct.

11 65. Defendant has thus engaged in unlawful, unfair, and fraudulent business acts and
12 practices, entitling Plaintiffs and the other Class Members to judgment and equitable relief against
13 Defendant, as set forth in the Prayer for Relief, including full restitution and/or disgorgement of all
14 revenues, earnings, profits, compensation, and benefits which may have been obtained by Defendant
15 as a result of such business acts or practices, and enjoining Defendant from engaging in the practices
16 described herein.

THIRD CLAIM

Violation of California's Consumer Legal Remedies Act,

California Civil Code section 1770 *et seq.*,

And the Consumer Protection Statutes of the States in the Class

(On Behalf of Both Classes Against Defendant and Does 1 through 100)

22 66. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 - 44 and
23 each and every part thereof with the same force and effect as though fully set forth herein.

24 67. Defendant violated section 1770 of the Consumers Legal Remedies Act. Defendant
25 violated Section 1770 by:

a. Making false representations that Purell has characteristics, uses or benefits which it does not, in violation of California Civil Code § 1770(a)(5)

8 68. By committing the acts alleged above, Defendant violated the CLRA.

9 69. Plaintiffs and the Class Members are entitled to, pursuant to California Civil Code
10 §1780(1)(2), an order enjoining the above-described wrongful acts and practices of Defendant, and
11 ordering the payment of costs and attorneys' fees and any other relief deemed appropriate and proper
12 by the Court under California Civil Code §1780.

13 70. Plaintiffs are sending Defendant a letter demanding corrective actions pursuant to the
14 CLRA. Plaintiffs will amend their complaint to add claims for monetary damages if Defendant fails
15 to take the corrective actions

PRAYER FOR RELIEF

17 WHEREFORE, Plaintiffs individually and on behalf of all other members of the general
18 public similarly situated, pray for relief and judgment against Defendant, and each of them, jointly
19 and severally, as follows:

Class Certification

21 1. That this action be certified as a class action and the Classes certified;
22 2. That Plaintiffs be appointed as the Class Representatives for the Classes; and
23 3. That counsel for Plaintiffs and the putative Classes be appointed as class counsel;

On the First Claim

26 1. That Defendant be enjoined from continuing to represent that Purell prevents or
27 reduces the flu or other viruses:

1 2. That Defendant be mandated to engage in a corrective advertising campaign to
2 educate the public that there is no reliable evidence that Purell prevents or reduces the flu or other
3 viruses;

4 3. That Defendant be required to provide Plaintiffs and Class Members with full
5 restitution for purchases made based on Defendant's false advertising; and

6 4. All such other and further relief as the Court deems just and proper.

On the Second Claim

8 1. That Plaintiffs and Class Members be awarded their actual damages according to
9 proof;

10 2. That Defendant be enjoined from continuing to represent that Purell prevents or
11 reduces the flu or other viruses:

12 3. That Defendant be mandated to engage in a corrective advertising campaign to
13 educate the public that there is no reliable evidence that Purell prevents or reduces the flu or other
14 viruses;

15 4. That Plaintiffs and Class Members be awarded punitive damages as to the
16 appropriate cause of action;

17 5. That Plaintiffs and Class Members be awarded their reasonable attorneys' fees,
18 expert witness fees, and other costs as may be applicable;

19 6. That Plaintiffs and Class Members be awarded interest on the monies wrongfully
20 obtained from the date of collection through the date of entry of judgment in this action; and

7. All such other and further relief as the Court deems just and proper.

On the Third Claim

23 1. That Defendant be enjoined from continuing to represent that Purell prevents or
24 reduces the flu or other viruses:

25 2. That Defendant be mandated to engage in a corrective advertising campaign to
26 educate the public that there is no reliable evidence that Purell prevents or reduces the flu or other
27 viruses:

3. That Plaintiffs and Class Members be awarded their reasonable attorneys' fees, expert witness fees, and other costs as may be applicable; and

3 4. All such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs John Marinovich and Gayle Sibley hereby demand a trial by jury of all claims so triable on behalf of themselves and the Classes.

DATED: January 31, 2020

HUSSIN LAW FIRM

By: /s/ Tammy G. Hussin
Tammy Gruder Hussin

DATED: January 31, 2020

WASKOWSKI JOHNSON YOHALEM LLP

By: /s/ Daniel R. Johnson
Daniel R. Johnson (pro hac vice to be approved)

DATED: January 31, 2020

KOZONIS & KLINGER

By: /s/ Gary M. Klinger
Gary M. Klinger (pro hac vice to be sought)

*Attorneys for Plaintiffs John Marinovich and
Gayle Sibley and the putative Classes*

Exhibit A



PURELL @PURELL · Nov 9, 2017

Is it a **#cold** or the **#flu**? ow.ly/3Cpw30go1MY



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PURELL @PURELL · Jan 6, 2017

What can you do to prevent the **flu**? ow.ly/Ouha307KsYE



1 2



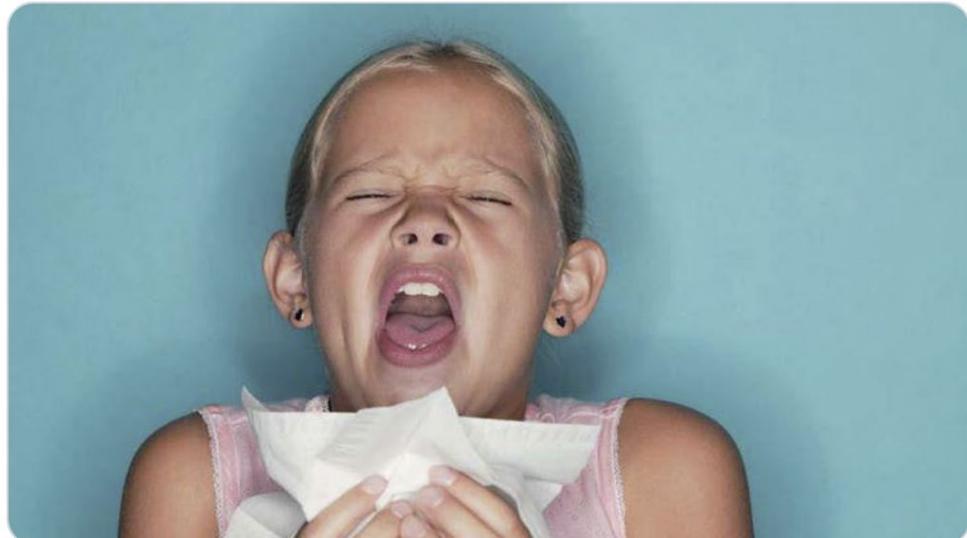
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PURELL @PURELL · Nov 28, 2017

It's **#cold** and **#flu** season. Are you ready? ow.ly/1uCx30gSdlm



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PURELL @PURELL · Jan 22, 2013

Trying to ward off getting the **flu**? Follow these recommendations from CDC. [cdc.gov/flu/pdf/freere...](http://@CDCFlu cdc.gov/flu/pdf/freere...)

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PURELL @PURELL · Jan 8, 2015

The **flu** can easily spread. Be sure to cover your cough and use good **#handhygiene** to help reduce illness. ow.ly/GUdnN #FightFlu

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PURELL @PURELL · Sep 29, 2016

DYK getting the **flu** shot and good **#HandHygiene** can help prevent illness? **#fightflu**

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PURELL @PURELL · Oct 3, 2016

This **flu** season take preventive measures to **#FightFlu**. Clean & disinfect surfaces & practice good **#HandHygiene**.

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PURELL @PURELL · May 14, 2019

Hey @Uber and @lyft drivers - **PURELL**® Surface Spray can be used on soft surfaces (like car upholstery!) and kills cold, **flu**, Norovirus and more in just 30 seconds. Stock up now! amzn.to/2W2MT6j

CW61 Arizona @CW61Arizona · May 13, 2019

If you ride in an @Uber or a @lyft make sure you got some @PURELL nearby! bit.ly/2VAEdES



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PURELL @PURELL · Sep 18, 2018

Learn some new Cold and **Flu** prep tips from [@TheSimpleParent](#) that include **PURELL**® brand products. (sponsored content) ow.ly/ffTn30lORE2



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PURELL @PURELL · Jun 12, 2018

Summer is almost here, so you can't get the **#flu**, right? ow.ly/HfTv30ksw50



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PURELL @PURELL · Mar 29, 2018

It might be **#spring**, but it's still **#cold** and **#flu** season. Here are some tips to help you and your family stay healthy, no matter the season.
ow.ly/n0K130ja2GI



4



4





PURELL @PURELL · Mar 28, 2018

From tips on **#flu** and **#norovirus** prevention, to information on hand hygiene & surface disinfecting products, our **#blog** has it all. Check out some of the posts you may have missed. ow.ly/h1qE30jc7Y7



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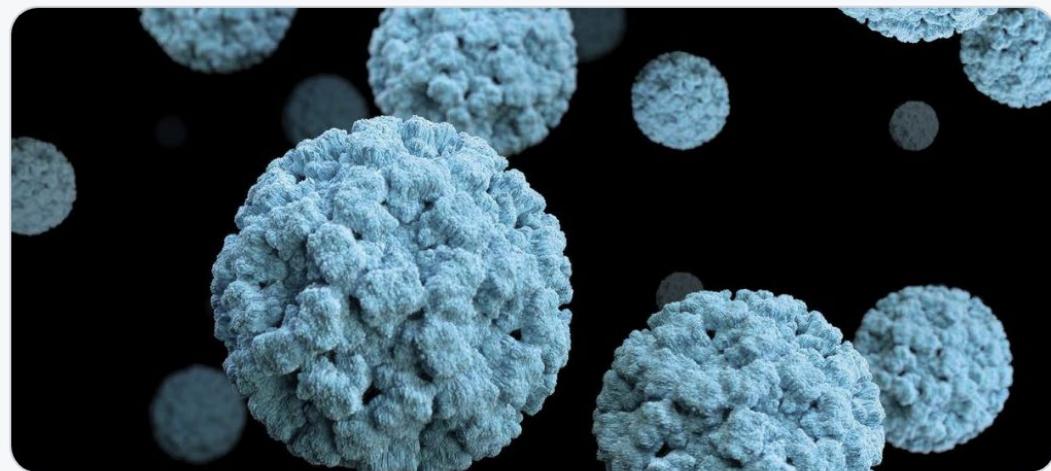


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PURELL @PURELL · Feb 21, 2018

It's not just **#cold** and **#flu** season, it's also **#norovirus** season. Learn more about how you can reduce the spread of the "stomach **flu**."
ow.ly/bRkE30ixsgB



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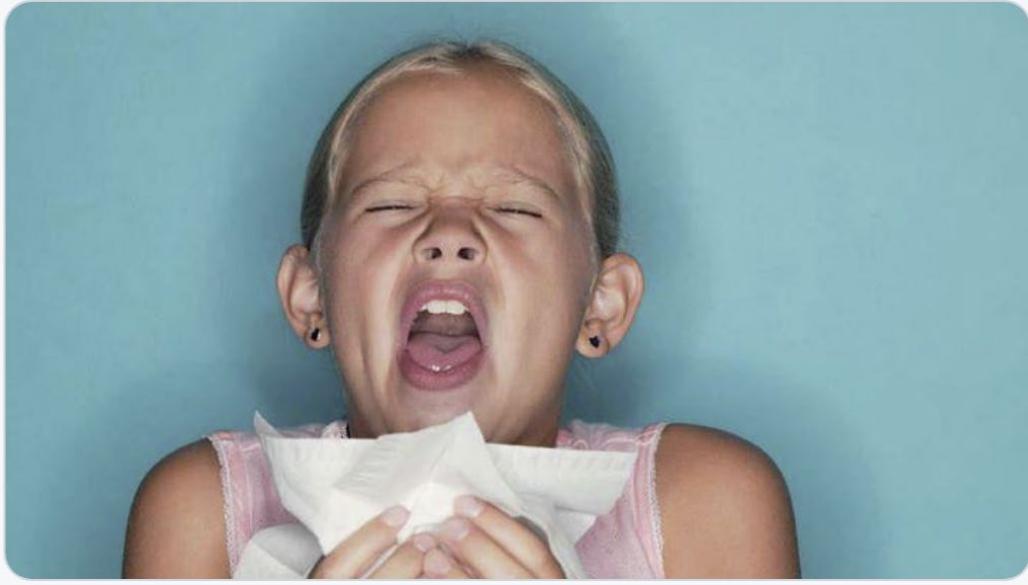


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 **PURELL** @PURELL · Jan 30, 2018

Have you ever wondered why **#flu** outbreaks happen during the **#winter**? ow.ly/sG9H30i5s90



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 **PURELL** @PURELL · Jan 11, 2018

Did you know **PURELL®** Surface Spray products kill **#cold** and **#flu** in 30 seconds? ow.ly/n83d30hIPXh



5 12

 **PURELL** @PURELL · Dec 27, 2017

PURELL® Surface Spray products quickly kill 99.99% of germs including **#cold**, **#flu** and **#norovirus** without any harsh chemicals. ow.ly/swvm30hrT0w

1 2 6

 **PURELL** @PURELL · Oct 25, 2017

How can your office stay healthy this **#cold** & **#flu** season?
ow.ly/tHNV30g7u6P



1 4 11



PURELL @PURELL · Mar 10, 2017

Even though it's almost **#spring**, it's still **#flu** season. What can you do to help **#FightFlu**? ow.ly/tCJo309KtrB



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PURELL @PURELL · Feb 6, 2018

Don't let the **#flu** slow down your office. Here are some tips on how to help keep your office healthy. ow.ly/KCi930ieycB



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1 7





PURELL @PURELL · Dec 12, 2017

Did you know **PURELL**® Surface Spray products quickly kill 99.99% of germs, including the **#cold** and **#flu**? ow.ly/JHKH30haXoV



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10



PURELL @PURELL · Apr 7, 2017

Did you know **PURELL**® Surface Sanitizers and Disinfectants kill **#norovirus** and **#cold** and **#flu** viruses in 30 seconds? ow.ly/n4Uw30apiUb



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 **PURELL** @PURELL · Jan 23, 2017

It's **#cold** & **#flu** season, & the co-worker who shared her vacation photos is now sharing her cold. Sound familiar? ow.ly/iAP6308goXf



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PURELL @PURELL · Jan 12, 2017

Learn how one school is taking steps, including having hand sanitizer in every classroom, to help lower the number of **flu** cases this year.

WQAD 8 WQAD ✅ @wqad · Jan 12, 2017

School in Davenport is taking steps to lower number of flu cases
bit.ly/2jaJJU



PURELL @PURELL · Dec 6, 2016

Do you have a **#cold** or **#flu**? Learn more about your symptoms on our **#HandHygiene** Blog. ow.ly/qSLu306Rohh





PURELL @PURELL · Feb 8, 2016

What can you do to prevent the **flu**? Learn more in the latest post on our Hand Hygiene Blog. ow.ly/Y4Xsp #flu



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PURELL @PURELL · Nov 20, 2014

Ultimate **Flu** Season Survival Guide: @Buzzfeed gives tips from experts, including GOJO Scientist @handhygienearbo ow.ly/ECpbX



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PURELL @PURELL · Feb 20, 2014

Do you splash and dash when washing your hands? **#PURELL** Scientist says take 20 seconds this cold and **flu** season. tinyurl.com/n7eexjv



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PURELL @PURELL · Jan 29, 2014

RT @JustinMcElroy: I hope Obama had some @Purell in the podium, cold and **flu** season doesn't care you're the President. #pleaseRTthispurell



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PURELL @PURELL · Jan 7, 2014

Some good safety precautions during **flu** season from the US Dept of Labor osha.gov/dts/guidance/f...



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PURELL @PURELL · Nov 9, 2013

Dont forget your @Purell this cold and **flu** season. @BostonMagazine bostonmagazine.com/health/blog/20...



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 **PURELL** @PURELL · Sep 25, 2012

As cold and **flu** season approaches, what is a must have for the kids in your house?



9 1

[https://twitter.com/search?q=purell%20flu%20\(from%3Apurell%20OR%20from%3Agojo\)%20until%3A2020-01-01%20since%3A2010-01-01&src=typed_query](https://twitter.com/search?q=purell%20flu%20(from%3Apurell%20OR%20from%3Agojo)%20until%3A2020-01-01%20since%3A2010-01-01&src=typed_query)

Exhibit B



Cold and Flu Season



HAND HYGIENE AS A PREVENTIVE MEASURE DURING COLD AND FLU SEASON

Public health organizations are encouraging preventive measures this cold and flu season to help prevent the spread of germs that can cause illness. Everyday hand hygiene, both handwashing and hand sanitizing with an alcohol-based hand sanitizer is the single most important way to reduce the spread of germs.

GOJO, maker of PURELL® Advanced Hand Sanitizer, is providing the following resources to raise awareness for hand hygiene to help decrease the spread of germs that cause illness during the seasonal months.

Cold and Flu Resources:

For up to date information regarding illness outbreaks and hygiene recommendations visit:

- [CDC Centers for Disease Control and Prevention, "3 Actions to fight the Flu"](#)
- [Centers for Disease Control and Prevention Seasonal Influenza Information](#)
- [Health Canada Hand Hygiene Recommendations for Flu Season](#)
- [Health Canada Flu Map by Province/Territory](#)
- [World Health Organization Influenza Information](#)
- [Flu.gov Prevention Information](#)
- [Flu Trends Around the World](#)
- [National Foundation of Infectious Diseases](#)

Staying Healthy During Illness Outbreaks



Frequently Asked Questions:

Q: What is influenza?

A: According to the Center for Disease Control and Prevention (CDC), seasonal influenza, commonly called "the flu," is caused by

influenza viruses, which infect the respiratory tract (i.e., the nose, throat, lungs). Unlike many other viral respiratory infections, such as the common cold, the flu can cause severe illness and life-threatening complications in many people. It is estimated that in the United States, each year on average 5% to 20% of the population gets the flu and more than 200,000 people are hospitalized from seasonal flu-related complications.

Q: What are influenza's symptoms?

A: Influenza, or the flu, is a contagious respiratory illness caused by flu viruses. It can cause mild to severe illness, and at times can lead to death. The flu is different from a cold. The flu usually comes on suddenly. People who have the flu often feel some or all of these symptoms:

- Fever or feeling feverish/chills
- Cough
- Sore throat
- Runny or stuffy nose
- Muscle or body aches
- Headaches
- Fatigue (tiredness)
- Some people may have vomiting and diarrhea, though this is more common in children than adults.

Q: How does the flu spread?

A: Most experts think that flu viruses are spread mainly by droplets made when people with flu cough, sneeze or talk. These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs. Less often, a person might also get the flu by touching a surface or object that has flu virus on it and then touching their own mouth or nose.

According to the Center for Disease Control and Prevention (CDC), to avoid this, people should stay away from sick people and stay home if sick. It also is important to wash hands often with soap and water. If soap and water are not available, use an alcohol-based hand rub. Linens, eating utensils, and dishes belonging to those who are sick should not be shared without washing thoroughly first. Eating utensils can be washed either in a dishwasher or by hand with water and soap and do not need to be cleaned separately. Further, frequently touched surfaces should be cleaned and disinfected at home, work and school, especially if someone is ill.

Q: Are there any preventive measures that can be taken against the flu?

A: The Centers for Disease Control and Prevention recommends "Take 3" Actions to Fight the Flu:

Take the time to get a flu vaccine,

Take every day preventative actions, including washing your hands with soap and water and if soap and water is not available use an alcohol-based hand sanitizer, and

Take flu antiviral drugs if your doctor prescribes them. [Learn more](#)

Q: Are PURELL® products effective against the flu?

A: The Food and Drug Administration (FDA) does not allow brands to make viral claims, but from a scientific perspective influenza is an enveloped virus. Enveloped viruses in general are easily killed or inactivated by alcohol. The World Health Organization (WHO) and the Center for Disease Control and Prevention (CDC) are recommending the use of alcohol-based hand sanitizer as a preventive measure for flu prevention.

Hand Hygiene Videos and Infographics

What is a good routine for hand washing ... 	When are the critical times to perform ha... 
--	---

*What is a good routine for handwashing and hand sanitizing?
Do you think you are washing and sanitizing with proper technique? Jim gives tips for a good handwashing and hand sanitizing routine.*

*When are the critical times to perform hand hygiene?
It's important to perform hand hygiene throughout the day, both at home and at work. Jim gives tips for those most critical moments where hand hygiene should be performed.*

How can we reduce our risk of getting sick 	How can businesses promote good hand ... 
---	---

*How can we reduce our risk of getting sick?
Hand hygiene is the single most important way to reduce the spread of germs that make you sick. Jim tells you why.*

*How can businesses promote good hand hygiene?
There are many effective solutions businesses can use to promote hand hygiene. Jim provides tips for employers and employees.*

<p>Staying Healthy During Illness Outbreaks</p> 	<p>How can parents promote good hand hyg...</p> 
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Parents Reveal Their "Germy" Little Secrets This Cold and Flu Season



Germ Alert - Your Co-Worker Might Not Call in Sick

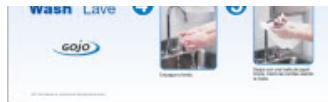


Protect Your Health. Make Hand Hygiene a Priority POSTER (2.14 MB)



Protect Your Health. Make Hand Hygiene a Priority SCREENSAVER (240 KB)





Hand Hygiene Regimen - WASH
Poster (1.19 MB)



Protect Your Health. Make Hand
Hygiene a Priority
SCREENSAVER (240 KB)

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GOJO Blog



Don't Let the Flu Slow Down Your Office



2/6/2018

By **Thom Wojtkun**

National Account Director, Commercial Real Estate

The severity of this year's flu season has been making headlines. One recent headline focused on the impact the flu could have on workplace productivity. According to a recent news report, this year's flu season will cost employers nearly \$10 billion based on lost productivity alone¹. The impact the flu has on both employee and employer health is significant, yet there are actions employers can take to help in keeping employees, and even their bottom line, healthy.

First and foremost, employers need to encourage sick employees not to come into work. We all know that illness-causing germs can spread quickly and one of the best ways to reduce their spread is to make sure those who aren't feeling well stay home to fully recover. Also, a quick reminder, if you still haven't gotten the flu vaccine, it is not too late. The flu vaccine is one of the best ways to help reduce the risk of coming down with the flu.

In addition to encouraging the disinfection of frequently touched surfaces and objects, like copiers and shared computers, employers should also promote good hand hygiene. Hand hygiene – handwashing with soap and water or using an alcohol-based hand sanitizer with at least 60% alcohol when soap and water are not available – is one of the most important measures we can all take to reduce the spread of illness-causing germs. Making hand hygiene products, such as hand sanitizing wipes and alcohol-based hand sanitizer, available is a great way to promote hand hygiene practices throughout the office.

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Contact: Kelly
Ward-Smith, Public
Relations Senior
Manager

In fact, a recent workplace outcome study, "Impact of a Comprehensive Workplace Hand Hygiene Program on Employer Health Care Insurance Claims and Costs, Absenteeism and Employee Perceptions and Practices," published in *The Journal of Occupational and Environmental Medicine (JOEM)*, found that offices equipped with PURELL® Advanced Hand Sanitizer and PURELL® Hand Sanitizing Wipes throughout the building and at employees' desks resulted in 24.3 percent fewer healthcare insurance claims for hand hygiene preventable illnesses. In addition, there were 13.4 percent fewer sick episodes during the study year in the intervention group compared to the previous year.

GOJO provides information and education to help promote effective hygiene this winter-germ season. Go to GOJO Hygiene Educational Tools for more information. Also, learn more about the study in *JOEM* and the PURELL Advanced Workforce Solution™ on our website.

Phone Number:

330-255-6293

Mobile Phone: 330-

819-8638

Email:

SmithKe@GOJO.com

This contact information is for news media only. For other inquiries, please contact GOJO customer service at 1-800-321-9647 or use the GOJO Contact Us form.

Featured News

[1] Challenger, Gray & Christmas Study as quoted in "Flu linked to record number of sick days, costing employers almost \$10B" Retrieved January 30, 2018, from <http://www.foxbusiness.com/features/2018/01/22/flu-season-could-cost-employers-9-4-billion-this-year.html>



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Update on the 2019 Novel Coronavirus, Wuhan, China



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More



GOJO Blog



Is it a Cold or the Flu?



1/4/2018

By Kelly McGlumphy

Public Relations Senior Manager, GOJO Industries

The Centers for Disease Control and Prevention (CDC) has warned that seasonal influenza activity has increased sharply in the United States. In fact, the number of states reporting widespread flu activity has nearly doubled over the last week.¹ Even more bad news, flu activity is expected to continue for a few months; according to the CDC most flu activity peaks between December and February.²

To complicate matters, common cold viruses widely circulate during flu season, with the average adult getting two to four colds per year, mostly between September and late April.³ Because these two types of viral respiratory illnesses have similar symptoms, it can be difficult to distinguish between them based on symptoms alone.

In general, the flu is more severe than the common cold. Colds typically do not result in serious complications, such as pneumonia, bacterial infections or hospitalizations. In some cases, diagnostic testing may need to be done in order to determine whether a person has a cold or the flu. So how can you tell if it is the cold or flu? Here are some general differences.

Symptoms	Cold	Flu
----------	------	-----

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Ward-Smith, Public
Relations Senior
Manager

Fever	Rare	Usual, high (100° F to 102° F, occasionally higher, especially in young children); lasts 3-4 days	Phone Number: 330-255-6293 Mobile Phone: 330-819-8638 Email: SmithKe@GOJO.com
Headache	Rare	Common	This contact information is for news media only. For other inquiries, please contact GOJO customer service at 1-800-321-9647 or use the GOJO Contact Us form.
General aches and pains	Slight	Usual; often severe	
Fatigue, weakness	Sometimes	Usual; can last up to 2 to 3 weeks	
Extreme exhaustion	Never	Usual; at the beginning of illness	
Stuffy nose	Common	Sometimes	
Sneezing	Usual	Sometimes	
Sore throat	Common	Sometimes	
Chest discomfort, cough	Mild to moderate; hacking cough	Common; can become severe	

Source: WebMd Media References. Retrieved December 29, 2017, from <https://www.webmd.com/a-to-z-guides/discomfort-15/cold-flu-season/is-it-a-cold-or-flu>

Regardless of whether the culprit is the cold or the flu, there are some general infection prevention and control principles that every person should follow in order to stay healthy during cold and flu season.

- 1. Get your flu vaccine.** This is the most important measure you can take. Remember, you can't get the flu from the flu vaccine because it's either made with inactivated virus, no virus at all, or a weakened virus that cannot cause illness.
- 2. If you do get the flu, your doctor may prescribe flu antiviral drugs.** These drugs can make flu illness milder and shorten the time you are sick.
- 3. Practice good hand hygiene.** Wash your hands with soap and water or use an alcohol-based hand sanitizer with at least 60% alcohol when soap and water are not available.
- 4. Avoid touching your eyes, nose, and mouth.** Germs from your hands can enter your body through your eyes, nose and mouth.

Featured News



GOJO Takes Immediate Action on Communication from the FDA

5. Cover your cough or sneeze. Cough or sneeze into your sleeve or into a tissue and perform hand hygiene immediately after.

6. Stay home if you are sick, and limit contact with others as much as possible. A good rule of thumb is to stay home for at least 24 hours after your fever is gone (without the use of fever-reducing medications).

7. Disinfect and clean surfaces often. Use a product that is formulated to kill the cold and flu virus. This can help reduce the amount of germs present that can make you sick.

For more information about the flu and the most up-to-date information about this year's flu season, visit either GOJO Cold and Flu or the CDC's flu web page.

1 Centers for Disease Control and Prevention. Situation Update: Summary of Weekly FluView Report. Retrieved December 29, 2017, from

<https://www.cdc.gov/flu/weekly/summary.htm>

2 Centers for Disease Control and Prevention. The Flu Season. Retrieved December 29, 2017, from <https://www.cdc.gov/flu/about/season/flu-season.htm>

3 WebMD. Common Cold Overview. Retrieved December 29, 2017, https://www.webmd.com/cold-and-flu/common_cold_overview

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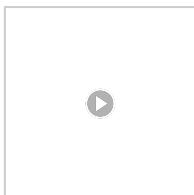
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"Remember Hand Hygiene During Cold & Flu Season"
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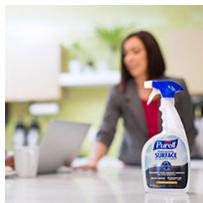
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Update on the 2019 Novel Coronavirus, Wuhan, China



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GOJO Blog



Why Do Flu Outbreaks Happen in the Winter?



1/30/2018

By Elizabeth De Nardo, Ph.D.

Skin Care Science and Technology Senior Scientist I

Why is it when the temperatures outside become colder we see a peak in illnesses, like the flu? Many of us may ask ourselves this question and wonder why people tend to be sick especially during the winter months. And, if you have asked yourself that question, you are not alone. In fact, researchers have always sought to find the answer.

1

There are numerous environmental drivers that contribute to the seasonality of influenza, or the flu. These include: absolute humidity, relative humidity, temperature, solar insolation, and even the school calendar. With so many different factors, it can be difficult to distinguish if one has a more significant impact over another. Yet, there is one that stands out.

A Change in Humidity

For some time, the predominance of influenza in the winter months was attributed to a decrease in indoor relative humidity, or how much humidity there is in the air compared to how much there could be. Such assertions, however, do not square with the fact that outdoor relative humidity peaks in winter. In contrast, absolute humidity, which is an actual measure of the water vapor content of air, is better suited for determining the influence of environmental factors on the influenza viral persistence and transmission.

Research findings indicate the seasonal cycle of absolute humidity may be the reason we see flu cases spiking during the colder months. Specifically, low levels of absolute humidity, both indoors

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Ward-Smith, Public
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Manager

and outdoors, increase influenza virus survival and thus increase influenza virus transmission efficiency. The findings indicate that Influenza virus survival responds to the amount of water vapor in the surrounding air. So, the higher the humidity, the better the chances of the flu virus not surviving.

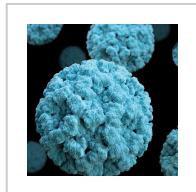
While we may not be able to rush to or live in climates with high humidity during the winter months, there are measures we can all take to reduce our risk of becoming ill; these include the practice of good hand hygiene (handwashing or hand sanitizing with an alcohol-based hand sanitizer when soap and water are not available) at key moments and surface disinfection. You can learn more about tips to help you stay well at www.GOJO.com/ColdandFlu.

References

Shaman J, Pitzer VE, Viboud C, Grenfell BT, Lipsitch M (2010) Absolute Humidity and the Seasonal Onset of Influenza in the Continental United States. *Journal PLoS Biol* 8(2):

Jeffrey Shaman and Melvin Kohnb (2009). Absolute humidity modulates influenza survival, transmission, and seasonality *PNAS* | March 3, vol. 106 | no. 9 | 3243–3248

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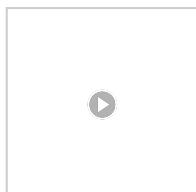
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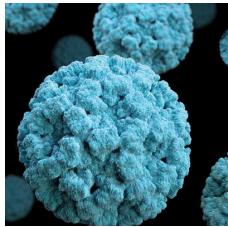


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GOJO Blog



It's Not Just Cold and Flu Season!



2/21/2018

By Kelly McGlumphy

Public Relations Senior Manager, GOJO Industries

The widespread severity of this year's flu season has been making headlines. Yet, there is another virus that tends to see its peak during the winter months, norovirus.

Sometimes called the "stomach flu," norovirus is the most common cause of acute viral gastroenteritis around the world, and the most common cause of foodborne illness in the United States. Unlike some other infectious diseases, we can get norovirus time and again, and the average person will experience a norovirus infection five times in their life¹

What are the Symptoms?

Norovirus symptoms usually appear 12 to 48 hours after first exposure to the virus, and last approximately one to three days. The most common symptoms of norovirus are:

- Diarrhea
- Vomiting
- Nausea
- Stomach pain

Other symptoms include:

- Headache
- Fever
- Body aches

People with norovirus are most contagious when they are sick, and for a few days after they feel better.

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Contact: Kelly
Ward-Smith, Public
Relations Senior
Manager

How Does Norovirus Spread?
So, how is it spread? Norovirus spreads quickly and rapidly, people can become infected with it by:

- Eating food or drinking liquids contaminated with norovirus, most likely prepared by an individual who is infected with the virus
- Touching surfaces or objects with norovirus on them and then putting your hand or fingers in your mouth
- Having direct contact with a person who is infected with norovirus, for example, when sharing food or utensils with them

Steps to Reduce the Spread of Norovirus

Even though norovirus is highly contagious, there are ways you can reduce the risk of its spread. According to the Centers for Disease Control and Prevention, following these steps can help to reduce the spread of the virus.

1. Practice good hand hygiene. Make sure to wash your hands with soap and water at key moments, especially after using the restroom since the virus can spread through stool. Alcohol-based hand sanitizers with at least 60% alcohol can be used *in addition to* handwashing.
2. Disinfect frequently touched surface. Immediately disinfect and clean contaminated surfaces with a disinfectant and cleaner formulated to kill norovirus. For example, PURELL® Surface Sprays kill norovirus in 30 seconds
3. Wash laundry thoroughly
4. Wash fruits and vegetables when preparing food; follow proper food preparation guidelines
5. Do not prepare meals when you are sick²

Whether you think you might have a cold, flu or norovirus, it's always important to consult a doctor and take precautionary measures to help you and everyone stay healthy.

For more information on hand hygiene and surface disinfection measures, visit GOJO.com

1. Lopman et al. 2016. The Vast and Varied Global Burden of Norovirus: Prospects for Prevention and Control. PLoS Medicine 13(4): e1001999. Available at <http://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1001999>
2. Centers for Disease Control and Prevention. Norovirus. Retrieved January 24, 2017, from <https://www.cdc.gov/features/norovirus/>

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SmithKe@GOJO.com

This contact information is for news media only. For other inquiries, please contact GOJO customer service at 1-800-321-9647 or use the GOJO Contact Us form.

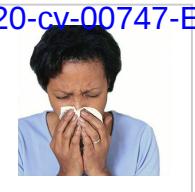
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Exhibit C

WARNING LETTER**GOJO Industries Inc****MARCS-CMS 599132 – JANUARY 17, 2020****Delivery Method:**

UPS and Electronic Mail

Product:

Drugs

Recipient:

Carey Jaros

President and Chief Executive Officer

GOJO Industries Inc

3783 State Road

Cuyahoga Falls, OH 44223-2603

United States

Issuing Office:

Division of Pharmaceutical Quality Operations III

United States

January 17, 2020

WARNING LETTER**Case # 599132**

Dear Mses. Jaros and Kanfer Rolnick:

This letter concerns your firm's marketing of the PURELL® Healthcare Advanced Hand Sanitizer product line that includes the over-the-counter (OTC) drug products "PURELL® Healthcare Advanced Hand Sanitizer Gentle & Free Foam," "PURELL® Healthcare Advanced Hand Sanitizer Gel," "PURELL® Healthcare Advanced Hand Sanitizer Foam," "PURELL® Healthcare Advanced Hand Sanitizer Gentle & Free Foam ES6 Starter Kit," and "PURELL® Healthcare Advanced Hand Sanitizer ULTRA NOURISHING™ Foam." **1** On your websites, your firm markets these products individually as well as in combination with other PURELL

products for use in various settings, such as athletic facilities, schools, and offices, under the title of “THE PURELL SOLUTION.” In this letter, we collectively refer to these products as “PURELL® Healthcare Advanced Hand Sanitizers.” Based on claims on your product websites, which also include links to webpages where these products may be purchased, the PURELL® Healthcare Advanced Hand Sanitizers are intended for use as consumer and healthcare antiseptics.

As currently formulated and labeled, PURELL® Healthcare Advanced Hand Sanitizers are unapproved new drugs in violation of section 505(a) of the Federal Food, Drug, and Cosmetic Act (FD&C Act or Act), 21 U.S.C. 355(a). Introduction or delivery for introduction of such products into interstate commerce is prohibited under section 301(d) of the FD&C Act, 21 U.S.C. 331(d). These violations are described in more detail below.

Unapproved New Drugs

Examples of claims observed on your product websites, www.gojo.com and www.purell.com, and social media accounts for PURELL® Healthcare Advanced Hand Sanitizers that provide evidence of the products’ intended uses (as defined in 21 CFR 201.128) include, but may not be limited to, the following:

On your PURELL® Healthcare Advanced Hand Sanitizer product pages:

“Kills more than 99.99% of most common germs that may cause illness in a healthcare setting, including MRSA & VRE”

On your webpage titled, “GOJO Blog What You Need to Know About Candida auris in the Healthcare Setting”:

“To help prevent transmission, hand hygiene with an alcohol-based hand sanitizer is recommended along with hand washing if hands are soiled. PURELL® Advanced Gel, Foam, and Ultra-Nourishing Foam Hand Sanitizer products demonstrated effectiveness against a drug resistant clinical strain of Candida auris in lab testing.”

On your webpage titled, “The PURELL SOLUTION™ for Athletic Facilities”:

“PURELL® Products Help Eliminate MRSA & VRE . . . 100% MRSA & VRE Reduction[] . . . A recent outcome study shows that providing the right products, in a customized solution, along with educational resources for athletes and staff can reduce MRSA and VRE by 100%[]”

On your webpage titled, “The PURELL SOLUTION™ for Education”:

“51% Reduced Student Absenteeism . . . PURELL® products have proven results in delivering positive health outcomes. Illness causes 144 million lost school days each year2 []. . . In a recent study, student absenteeism was reduced by 51% when PURELL hand hygiene products were used in conjunction with a curriculum to teach kids about good hand hygiene[] . . . 10% Less Teacher Absenteeism . . . PURELL® Products Help Teachers Stay Well[] . . . New teachers are particularly more susceptible to student borne illness[]. . . In one study, schools that combined hand-hygiene education with PURELL® products reduced teacher absenteeism by 10%[]”.

On your webpage titled, “PURELL® Products are Proven to Reduce Absenteeism”:

“PURELL® Products are Proven to Reduce Absenteeism . . . On average, illness causes 144 million lost school days each year[] and missing school can have a significant effect on a student’s performance. . . . Research has shown that when used alongside a curriculum to teach students about hand hygiene, PURELL® products can

reduce student absenteeism by up to 51%[].... Additionally, teachers who follow this program also experience a 10% reduction of absenteeism[].”

On your Facebook page at <https://www.facebook.com/purell/>:

“The PURELL SOLUTION™ has the products you need to help prevent the spread of infection this germ season. Visit GOJO.com for more information.”

In addition, you make statements within the “Frequently Asked Questions” on your website, www.gojo.com, that suggest that PURELL® Healthcare Advanced Hand Sanitizers, which are formulated with ethyl alcohol, may be effective against viruses such as the Ebola virus, norovirus, and influenza.

Specifically, your website states:

Illness Outbreak

...

What Steps Can I Take to Prevent the Spread of Norovirus? Even though norovirus is highly contagious, there are ways you can reduce the risk of its spread. According to the Centers for Disease Control and Prevention, follow these steps to reduce the spread of the virus. 1. Practice good hand hygiene. Make sure to wash your hands with soap and water at key moments, especially after using the restroom since the virus can spread through stool. Alcohol-based hand sanitizers with at least 60% alcohol can be used in addition to handwashing

...

Are PURELL® Hand Sanitizer products effective against the flu? The FDA does not allow hand sanitizer brands to make viral claims, but from a scientific perspective, influenza is an enveloped virus. Enveloped viruses in general are easily killed or inactivated by alcohol. The World Health Organization (WHO) and the Center for Disease Control and Prevention (CDC) are recommending the use of alcohol-based hand sanitizer as a preventive measure for flu prevention”

Is PURELL® Advanced Hand Sanitizer Effective Against Ebola?... As of today, we are not aware of any hand sanitizers that have been tested against Ebola viruses, including PURELL® Advanced Hand Sanitizer.

However, it is important to note that the Ebola virus is an enveloped virus. Enveloped viruses in general are easily killed or inactivated by alcohol. **World Health Organization (WHO)** and the **Center for Disease Control and Prevention (CDC)** are recommending the use of alcohol-based hand sanitizer as a preventive measure during this outbreak ...

These statements, made in the context of the Frequently Asked Questions section, clearly indicate your suggestion that PURELL® Healthcare Advanced Hand Sanitizers are intended for reducing or preventing disease from the Ebola virus, norovirus, and influenza. As such, the statements are evidence of your products' intended uses. However, FDA is currently not aware of any adequate and well-controlled studies demonstrating that killing or decreasing the number of bacteria or viruses on the skin by a certain magnitude produces a corresponding clinical reduction in infection or disease caused by such bacteria or virus.

Based on the above claims, PURELL® Healthcare Advanced Hand Sanitizers are drugs as defined by section 201(g)(1)(B) of the FD&C Act, 21 U.S.C. 321(g)(1)(B), because they are intended for the diagnosis, cure, mitigation, treatment, or prevention of disease, and/or under section 201(g)(1)(C) of the FD&C Act, 21 U.S.C. 321(g)(1)(C), because they are intended to affect the structure or any function of the body. Further, your PURELL® Healthcare Advanced Hand Sanitizers, which are formulated with ethyl alcohol, are intended for

use as both consumer antiseptic rubs and health care antiseptic rubs. Although the individual products claim to be “designed for healthcare environments,” consumers can buy these products from the websites linked to the “Where to Buy” tabs listed on your product website.

Furthermore, PURELL® Healthcare Advanced Hand Sanitizers are new drugs within the meaning of section 201(p) of the FD&C Act, 21 U.S.C. 321(p), because they are not generally recognized as safe and effective for use under the conditions prescribed, recommended, or suggested in their labeling. New drugs may not be introduced or delivered for introduction into interstate commerce without prior approval from FDA, as described in section 505(a) of the FD&C Act, 21 U.S.C. 355(a). No FDA approved applications pursuant to section 505 of the Act, 21 U.S.C. 355, are in effect for your PURELL® Healthcare Advanced Hand Sanitizers, nor are we aware of any adequate and well controlled clinical trials in the published literature that support a determination that PURELL® Healthcare Advanced Hand Sanitizers are generally recognized as safe and effective for use under the conditions suggested, recommended, or prescribed in their labeling. Accordingly, PURELL® Healthcare Advanced Hand Sanitizers are unapproved new drugs marketed in violation of sections 505(a) and 301(d) of the FD&C Act, 21 U.S.C 355(a) and 331(d).

We note that your website suggests that PURELL® Healthcare Advanced Hand Sanitizers are marketed under the OTC Drug Review and that they are formulated with ethyl alcohol. For OTC drug products intended for use as consumer antiseptic rubs, on April 12, 2019, FDA published the Safety and Effectiveness of Consumer Antiseptic Rubs; Topical Antimicrobial Drug Products for Over-the-Counter Human Use Final Rule (84 FR 14847) (effective April 12, 2020). FDA deferred consideration of benzalkonium chloride, ethyl alcohol, and isopropyl alcohol in the 2019 Consumer Antiseptic Rub Final Rule (for additional information, see Docket No. FDA-2016-N-0124 at <https://www.regulations.gov> (<https://www.regulations.gov>)).

For OTC drug products intended for use as health care antiseptics, on December 20, 2017, FDA published the Safety and Effectiveness of Health Care Antiseptics; Topical Antimicrobial Drug Products for Over-the-Counter Human Use Final Rule (82 FR 60474, December 20, 2017). In the 2017 Final Rule for Health Care Antiseptics, FDA announced it had deferred rulemaking on six active ingredients for specific OTC Health care antiseptic uses. Included in those six active ingredients are alcohol (also referred to as ethanol or ethyl alcohol) for use in a health care personnel hand rub or surgical hand rub (for additional information, see Docket No. FDA-2015-N-0101 at <https://www.regulations.gov>).

Until FDA promulgates final rules establishing whether ethyl alcohol, as one of the deferred ingredients listed in the two rules above, is generally recognized as safe and effective (GRASE) for the antiseptic uses described above, the agency generally does not intend to object to the marketing of products, provided they meet the proposed formulation and labeling conditions described in the relevant tentative final monograph (TFM) and each general condition in 21 CFR 330.1 and provided that a particular product does not constitute a hazard to health. Such marketing, however, is subject to the risk that a final rule may require reformulation, relabeling, and/or FDA approval under section 505 of the FD&C Act, 21 U.S.C. 355.

Your PURELL® Healthcare Advanced Hand Sanitizer products do not comply with the relevant TFM.

Your labeling claims that PURELL® Healthcare Advanced Hand Sanitizers are effective in preventing disease or infection from pathogens such as Ebola, MRSA, VRE, norovirus, flu, and Candida auris, and in preventing the spread of infection, go beyond merely describing the general intended use of a topical antiseptic as set forth in the above-referenced relevant rulemakings. Furthermore, the claims on your product websites suggest that PURELL® Healthcare Advanced Hand Sanitizers are effective in reducing illness or disease-related student and teacher absenteeism also go beyond merely describing the general intended use of a topical antiseptic as

set forth in the above-referenced relevant rulemakings. Such claims are not described in any OTC final rule, the above-referenced TFM (see 59 FR 31402, June 17, 1994), or any rulemakings being considered under the OTC Drug Review. Additionally, we are unaware of any adequate and well-controlled clinical trials in the published literature that support a determination that PURELL® Healthcare Advanced Hand Sanitizers are GRASE for the above-described intended uses. Furthermore, we are not aware of a similar OTC product as formulated and labeled that was available in the United States market on or before the inception of the OTC Drug Review.

Therefore, as formulated and labeled, the PURELL® Healthcare Advanced Hand Sanitizer products are not covered under any OTC monograph or ongoing rulemaking that sets forth conditions for general recognition of safety and effectiveness for such uses. Moreover, no product intended to prevent disease or infection from specific pathogens, such as MRSA, VRE, norovirus, flu, and Candida auris; intended to prevent the spread of infections; or intended to reduce illness or disease-related student and teacher absenteeism, is being considered under FDA's OTC Drug Review. Furthermore, we are not aware of evidence demonstrating that the PURELL® Healthcare Advanced Hand Sanitizer products as formulated and labeled are generally recognized by qualified experts as safe and effective for use under the conditions suggested, recommended, or prescribed in their labeling.

Conclusion

The violations cited in this letter are not intended to be an all-inclusive list of deficiencies regarding your products. Please be aware that you are responsible for investigating and determining the causes of these violations and for preventing their recurrence and the occurrence of other violations. It is your responsibility to ensure that your firm complies with all requirements of federal law and FDA regulations.

You should take prompt action to correct the violations cited in this letter. Failure to promptly correct these violations may result in legal action without further notice, including, without limitation, seizure and injunction.

Within fifteen working days after you receive this letter, please notify this office in writing of the specific steps that you have taken to correct violations. Please include an explanation of each step being taken to prevent the recurrence of violations, as well as copies of related documentation. If you believe that your products are not drugs or unapproved new drugs or otherwise may be legally marketed, please provide your reasoning and any supporting information for our consideration. If you cannot complete corrective action within fifteen working days, state the reason for the delay and the time within which you will complete the correction.

Please send your electronic reply to: ORAPHARM3_RESPONSES@fda.hhs.gov.

Attn:

Nicholas F. Lyons
Director of Compliance
U. S. Food and Drug Administration
Division of Pharmaceutical Quality Operations III

Refer to the Unique Identification Number (Case# 599132) when replying. If you have questions regarding the contents of this letter, please contact me at (312) 596-4220.

Sincerely,

/S/

Nicholas F. Lyons for Art O. Czabaniak
Program Division Director
Division of Pharmaceutical Quality Operations III

1 These products are marketed in different sizes and package configurations and are designed to be used with various push-style or hands-free dispensers.

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